

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

RECEIVED

JAN 28 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Johnson Broadcasting, Inc.)
)
 v.)
)
Echostar Communications Corporation,)
General Motors Corporation, and)
Hughes Electronics Corporation)

CS Docket No. 01-348

To: The Commission

Petition to Deny

Johnson Broadcasting, Inc., ("Johnson") and Johnson Broadcasting of Dallas, Inc. (herein collectively referred to as "Johnson") by its attorneys, hereby files in the above referenced docket this Petition to Deny the applications received by the Commission on December 3, 2001 requesting consent to the transfer of control of licenses and authorizations held by Hughes Electronics Corporation ("Hughes") and its subsidiaries and affiliates and by EchoStar Communications Corporation ("ECC") and its subsidiaries and affiliates (collectively, the "Applicants") to EchoStar Communications Corporation (New Echostar).¹

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Johnson is the licensee of the television broadcasting stations KNWS in Katy (Houston) and KLDL Lake Dallas (Dallas) Texas. As a competitor in the marketplace it

¹ See, FCC Public Notice issued on December 21, 2001 by the Cable Services Bureau, DA 01-3005. The public notice further notes that the proposed license transfers will result form the spin-off of Hughes from General Motors Corporation (GM), which currently owns all of the capital stock of Hughes, and the merger of ECC with and into Hughes. Hughes will be the surviving corporation, with a new ownership structure, and the merged entity will be renamed Echostar Communications Corporation ("New Echostar").

has standing under the Communication's Act and Commission's Rules because it will be affected by the transfer of licenses in terms of local-into-local mandatory satellite carriage of its broadcast signal.²

Grant Of The Applications Will Result In Excessive Market Concentration And Will Not Promote The Public Interest

Currently, ECC and Hughes, through its subsidiary DirecTV, are the two major direct broadcast satellite ("DBS") carriers in the United States. As a combined entity, they would have overwhelming control of the DBS market. As such, combining these two carriers' DBS operations would lead to anti-competitive abuses and lessen competition. Furthermore, recent actions by DirecTV and ECC demonstrate that the merger would not be in the public interest.³ The evidence indicates that New Echostar, would continue to undermine the ability of local television broadcast stations to serve the public by denying or marginalizing their ability to participate in carriage of their television signals on New EchoStar's satellite service, as required under Section 338 of the Communications Act and Section 76.66 of the Commission's Rules.

In November 1999 Congress passed and the President signed legislation called the Satellite Home Viewer Act ("SHIVA"). SHIVA amended the copyright laws and the Communications Act of 1934 ("Act"). As amended by SHIVA, Section 338 of the Act, 47 U.S.C. § 338 permitted satellite carriers, for the first time, to transmit local television broadcast signals into the local markets together with distant or national broadcast

² See e.g., *Sanders Bros. Radio Station*, 309 U.S. 470 (1940). See also, Declaration of Douglas R. Johnson, Exhibit 1 hereto.

³ See Exhibit 2, National Association of Broadcasters ("NAB") News Release dated December 19, 2001 noting that a recent telephone survey shows that consumers overwhelmingly oppose the satellite TV merger between DirecTV and ECC.

programming, providing what is known as "local-into-local" service. A satellite carrier electing to carry any one local station in a market under Section 338 of the Act was required to provide carriage by January 1, 2002 for all local television broadcast stations that made similar local-into-local service elections. The FCC adopted rules implementing Section 338 of the Act in Section 76.66 of the Commission's rules.⁴

As the legislative history of the SHVIA indicated, Congress was concerned that, "without must carry obligations, satellite carriers would simply choose to carry only certain stations which would effectively prevent many other local broadcasters from reaching potential viewers in their service areas." During SHVIA's phase-in period the satellite carriers confined their local-into-local offerings almost exclusively to major network affiliates and plainly announced their intention to cherry pick the major network affiliates. Both DirecTV and EchoStar filed suit seeking to have the carry-one, carry-all rule of SHVIA declared unconstitutional and seeking to enjoin enforcement of the rule. In *Satellite Broadcasting and Communications Assoc. v. FCC*, decided December 7, 2001, the Fourth Circuit Court of Appeals held that the carry-one, carry-all provisions of SHVIA were constitutional.

The anti-competitive proclivities of EEC and DirecTV to undermine the important legislative and regulatory policy objectives with respect to SHIVA were made even more evident in a recent Petition filed by the National Association of Broadcasters ("NAB")

⁴ On November 30, 2000 the Commission released a Report & Order that adopted new rules under Section 76.66 of the Commission's Rules and Regulations, 47 C.F.R. 76.66, implementing the provisions of Section 338 of the Act. *Implementation of the Satellite Home Viewer Improvement Act of 1999: Broadcast Signal Carriage Issues; Retransmission Consent Issues*, 16 FCC Rcd 1918, (2000) ("DBS Must Carry Report & Order"); Order on Reconsideration, 16 FCC Rcd 16544 (2001) ("DBS Must Carry Reconsideration Order").

and the Association of Local Television (“ALTV”).⁵ In their Emergency Petition, NAB and ALTV request that the Commission make it explicitly clear within its Rules that ECC must cease its recently proposed discriminatory practice of requiring a second dish for subscribers only to obtain access to certain local broadcast stations. NAB and ALTV note that this action by the Commission is necessary even after DirecTV was denied reconsideration on this specific issue based upon extensive Commission discussion in *DBS Order on Reconsideration*. There can be no doubt of the negative influence of DirecTV on ECC since the filing of their merger applications. As such, the approval of this merger will only exacerbate the cooperative efforts of Congress, the FCC, and other industry participants to create a competitive marketplace. Once this matter is fully investigated, Johnson believes the Commission will have no choice but to deny the merger applications.

Recent Actions By DirecTV And ECC Demonstrate That It Would Not Be In The Public Interest For The Commission To Approve The Applications For Transfer of Licenses and Authorizations

On July 2, 2001 Johnson sent certified mail, return receipt requested election notices for mandatory carriage of local-into-local satellite service to both DirecTV and ECC. This was done in accordance with Sections 76.66 and 1.4 of the Commissions Rules. Section 76.66(c)(3) of the Commission’s Rules provides that a local television station must, during the first four-year election cycle, notify a satellite carrier by July 1, 2001 of its carriage election. July 1, 2001 was a Sunday only two days after the Friday June 29, 2001 effective date of Section 76.66(c)(3) of the Rules. Under Section 1.4(j) of

⁵ Emergency Petition of National Association of Broadcasters and Association of Local Television to Modify or Clarify Rule in CS Docket No. 00-96, *In Re Implementation of the Satellite Home Viewer Improvement Act of 1999—Broadcast Signal Carriage Issues* filed on January 4, 2002.

the Rules, if a filing date falls on a Saturday, Sunday or holiday, the date is extended to the next business day.⁶ Accordingly, under Section 1.4(j) of the Rules, the Sunday, July 1, 2001 notification date was extended to the next business day, Monday, July 2, 2001. DirecTV and ECC reacted differently to Johnson's certified mail, return receipt requested election notice dated July 2, 2001.

DirecTV denied Johnson mandatory carriage on July 25, 2001 because it was not notified by July 1, 2001.⁷ After correspondence between Johnson and DirecTV that discussed the interrelationship of Sections 76.66 and 1.4 of the Commission's Rules, DirecTV reaffirmed its denial of mandatory carriage on September 6, 2001.⁸ On September 19, 2001 Johnson filed complaints before the Commission against DirecTV stating that DirecTV wrongfully denied its request for mandatory carriage because of its mistaken belief that the KNWS and KLDT carriage requests were late filed. On December 5, 2001 the Chief of the Cable Services Bureau issued its *Memorandum Opinion & Order (MO&O)* with respect to Johnson's KNWS complaint.⁹ The Bureau

⁶ Sec. 1.4 Computation of time:

(a) Purpose. The purpose of this rule section is to detail the method for computing the amount of time within which persons or entities must act in response to deadlines established by the Commission.

(e) Definitions for purposes of this section:

(1) The term holiday means Saturday, Sunday, officially recognized Federal legal holidays and any other day on which the Commission's offices are closed and not reopened prior to 5:30 p.m.

(j) Unless otherwise provided (e.g. Sec. 76.1502(e) of this chapter) if, after making all the computations provided for in this section, the filing date falls on a holiday, the document shall be filed on the next business day. See paragraph (e)(1) of this section.

Example 14: The filing date falls on Friday, December 25, 1987. The document is required to be filed on the next business day, which is Monday, December 28, 1987.

⁷ See Exhibits 3, letters to Johnson from DirecTV dated July 25, 2001.

⁸ See Exhibit 4, letters to DirecTV from Arthur V. Belendiuk, Esq. on behalf of Johnson dated August 3, 2001; and Exhibit 5 letters to Arthur V. Belendiuk from DirecTV dated September 6, 2001.

⁹ See, *In the Matter of Johnson Broadcasting, Inc. v. DIRECTV, Inc., Request for Mandatory Carriage of Television Station KNWS-TV, Katy, TX, Memorandum Opinion And Order*, CSR-5742-M, DA 01-2822, released December 5, 2001. (MO&O). The Bureau on recently acted on Johnson's KLDT complaint. See,

denied KNWS's request for mandatory carriage. On January 4, 2002 Johnson filed an Application for Review to the Commission, now pending, demonstrating fully that the Cable Bureau's *MO&O* was in error and should be reversed; and that Johnson's Application for Review should be granted and DirecTV ordered to provide mandatory local-into-local satellite carriage for KNWS.¹⁰

Initially upon receipt of Johnson's certified mail, return receipt requested, election notice dated July 2, 2001, ECC in a form letter dated July 30, 2001 rejected Johnson's request for mandatory carriage in part because it was postmarked after July 1, 2001.¹¹ However, after Johnson sent to ECC the same correspondence it sent to DirecTV explaining the interrelationship of Sections 76.66 and 1.4 of the Commission's Rules, ECC on August 29, 2001 in the "spirit of cooperation" withdrew the ground for rejection for a postmark beyond July 1, 2001.¹² On September 19, 2001 ECC sent another letter to Johnson affirming that all other grounds for rejection were withdrawn.¹³ All things were then moving forward for purposes of KNWS being carried on January 1, 2002 for local-into-local service over ECC's satellite system.

ECC's "spirit of cooperation" interestingly vanished after ECC, GM, and Hughes filed on December 3, 2001 their merger applications for transfer and control of licenses

In the Matter of Johnson Broadcasting of Dallas, Inc. v. DIRECTV, Inc., Request for Mandatory Carriage of Television Station KNWS-TV, Katy, TX, Memorandum Opinion And Order, CSR-5741-M, DA 02-114, released January 17, 2002.

¹⁰ See Exhibit 6, Application for Review by Johnson Broadcasting in CSR-5742, filed on January 4, 2002. It should be noted that failure of the Commission to act promptly on Johnson's Application for Review would result in an undeserved and substantially harsh penalty and significant damages to Johnson because the next mandatory carriage period does not begin until January 1, 2006.

¹¹ See Exhibit 7, letters to Doug Johnson from Echostar dated July 30, 2001.

¹² See Exhibit 8, letters to Echostar from Arthur V. Belendiuk, Esq. on behalf of Johnson dated August 7th and 8th 2001; Exhibit 9 letters to Arthur V. Belendiuk, Esq. from Echostar dated August 29, 2001.

¹³ See Exhibit 10, letters to Doug Johnson from Echostar dated September 19, 2001.

and authorizations. ECC sent letters to Johnson dated December 7, 2001 noting that ECC would not carry KNWS and KLDT during the 2002 must carry cycle because the must carry election to ECC was postmarked July 2, 2001. ECC stated that this new treatment of Johnson was based on a recent FCC ruling (not identified by ECC, but assumed to be the Cable Bureau's December 5, 2001 *MO&O* in the Johnson complaint against DirecTV).¹⁴

Based on these facts, the only scenario that Johnson can attribute to the changed "spirit of cooperation" is that DirecTV, which expects to govern satellite operations and treatment of local broadcasters under a New Echostar, has negatively influenced ECC. As a consequence, Johnson believes the actions of ECC and DirecTV undermine the Congress' and the FCC's overriding policy objective under SHIVA and Section 338 of the Communication's Act to promote a more competitive marketplace by allowing local television stations to partake in mandatory local-into-local carriage. The Commission needs to fully investigate this matter before it can make a public interest finding that the transfers will be in the public interest.

Furthermore, based on Johnson's January 4, 2001 Application for Review, Johnson fully believes the erroneous decision made in the Cable Bureau's December 5, 2001 *MO&O* will be reversed. Even so, the Commission cannot find that the proposed transfer in licenses would be in the public interest because of the overall market concentration that would result and the anti-competitive proclivities of DirecTV, which will dominate satellite operations and the treatment of local television broadcasters under a New Echostar, to undermine important legislative and regulatory policy objectives.

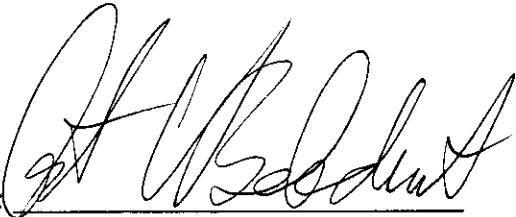
¹⁴ See Exhibit 11, letters to Arthur V. Belendiuk, Esq. from Echostar dated December 7, 2001.

Conclusion

For the reasons set forth above, the Commission should fully investigate whether the recent actions and anti-competitive proclivities of DirecTV and ECC are in the public interest; immediately grant Johnson's Application for Review reversing the Cable Bureau's December 5, 2001 *MO&O*; and deny the request to transfer control of licenses and authorizations held by Hughes Electronics Corporation and its subsidiaries and affiliates and by EchoStar Communications Corporation and its subsidiaries and affiliates to EchoStar Communications Corporation (New Echostar).

Respectfully submitted,

JOHNSON BROADCASTING, INC.

By: 

Arthur V. Belendiuk
Anthony M. Alessi
Its Attorney

January 24, 2002

SMITHWICK & BELENDIUK, P.C.
5028 Wisconsin Avenue, Suite 301
Washington, DC 20016

EXHIBIT 1

DECLARATION

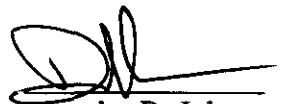
I, Douglas R. Johnson, declare under penalty of perjury that the following is true and correct:

I am the President and Director of Johnson Broadcasting, Inc. licensee of television station KNWS, Katy, Texas and Johnson Broadcasting of Dallas, Inc licensee of television station KLDT, Lake Dallas, Texas.

I have read the foregoing Petition to Deny the application for transfer of control of licenses and authorizations held by Hughes Electronics Corporation and by EchoStar Communications Corporation to EchoStar Communications Corporation.

Except for facts of which official notice may be taken or for which another source is cited, the statements made in the Petition to Deny are true and correct to the best of my knowledge and belief.

Executed this 17 day of January 2002.



Douglas R. Johnson

EXHIBIT 2

news



NATIONAL ASSOCIATION OF BROADCASTERS, 1771 N STREET, NW, WASHINGTON, DC 20036-2091

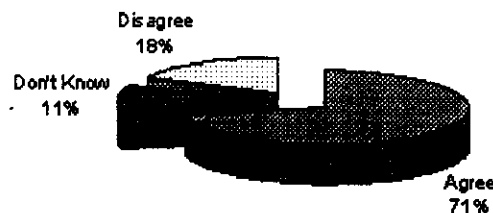
IMMEDIATE RELEASE

CONSUMERS OVERWHELMINGLY OPPOSE SATELLITE TV MERGER

WASHINGTON, D.C., December 19, 2001 – A random telephone survey of 1,000 adults has found that more than seven of ten survey respondents believe the federal government should reject the proposed acquisition of the satellite television service DirecTV by its only competitor, EchoStar Communications.

In a recent poll conducted for the National Association of Broadcasters (NAB), 71 percent of respondents said they agree with the statement that, "television providers are too important to allow the elimination of competition. The federal government should not allow the only two satellite television companies to merge into just one." The survey was conducted Nov. 26-27 by Luntz Research Companies and has a margin of error of 3.1 percent.

"Television providers are too important to allow the elimination of competition. The federal government should not allow the only two satellite television companies to merge into just one."



"Consumers are clearly worried that the merger of the nation's only two satellite television providers will negatively impact the choices available to them," said NAB President and CEO Edward O. Fritts. "However the antitrust lawyers choose to define the market, an overwhelming majority of consumers believe that the creation of a single satellite TV service will leave them with no choice at all."

"The reality is that most television homes today may choose only between a single local cable provider and either of the two major satellite TV providers," said pollster Frank Luntz. "The survey also found that, 84 percent of respondents agree that "having three choices of television providers is better for consumers than having two," and 76 percent agree that "there would be greater choice of television programming and better service" if consumers had more cable and satellite television choices."

"This is as big a consumer issue as I have ever seen, and one that knows no party lines," said Luntz. "I have polled on almost every issue facing Congress. Other than support for Social Security, I have not seen such unanimous opinions on anything."

Fritts said, "With the Satellite Home Viewer Act and the nation's transition to digital television, Congress and the Federal Communications Commission have worked hard to put the consumer's interests first. If the satellite merger goes forward, those interests take a huge step backwards. This survey proves that consumers haven't been fooled by the satellite TV industry's claims to the contrary."

NAB serves and represents America's radio and television stations.

-30-

Contact: Dennis Wharton
(202) 429-5350

THE

LUNTZ RESEARCH COMPANIES

Luntz Research & Strategic Services ■ The Public Opinion Company ■ Luntz Corporate ■ Luntz Worldwide

TELEVISION CHOICE AND COMPETITION

Poll Summary for Nation, Missouri, Mississippi, Montana, New Hampshire, and 3rd Congressional District of Louisiana

1. First, which of the following matters to you the most? That is, which of the following would you least like to live without?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
TELEVISION	59%	67%	56%	55%	59%	55%
COMPUTER	39%	29%	41%	41%	33%	42%
DON'T KNOW/REFUSED	2%	4%	4%	4%	8%	3%

2. When large consumer companies from the same industry merge, it reduces competition, and that hurts consumers.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
AGREE	77%	79%	76%	77%	75%	72%
DISAGREE	18%	14%	19%	18%	19%	21%
DON'T KNOW/REFUSED	4%	7%	6%	4%	7%	6%

3. Having three choices of television providers is better for consumers than having two.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
AGREE	83%	91%	87%	88%	87%	85%
DISAGREE	10%	4%	10%	5%	6%	10%
DON'T KNOW/REFUSED	6%	5%	3%	7%	7%	6%

4. If there were more cable and satellite companies, the cost for cable and satellite television service would be lower.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
AGREE	76%	79%	77%	74%	73%	74%
DISAGREE	18%	15%	17%	17%	19%	18%
DON'T KNOW/REFUSED	6%	6%	7%	9%	8%	8%

5. Americans who live in rural areas should have similar choice of television providers and programming as those who live in urban or suburban areas.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
AGREE	87%	90%	92%	81%	87%	89%
DISAGREE	9%	8%	5%	14%	10%	9%
DON'T KNOW/REFUSED	4%	2%	3%	5%	4%	1%

6. The federal government should not interfere with the business of business. If the only two satellite television companies want to merge, creating just one large satellite television company, they should have the right to do so without federal government interference.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
AGREE	45%	42%	47%	38%	33%	43%
DISAGREE	50%	51%	47%	53%	59%	52%
DON'T KNOW/REFUSED	5%	7%	7%	9%	9%	6%

7. Television providers are too important to allow the elimination of competition. The federal government should not allow the only two satellite television companies to merge into just one.

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
AGREE	71%	64%	62%	69%	70%	67%
DISAGREE	18%	29%	30%	23%	23%	28%
DON'T KNOW/REFUSED	12%	7%	9%	8%	8%	6%

..

8. So, if you had to choose, which of the following situations do you think would be better for consumers like yourself?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
TWO MEDIUM SIZED SATELLITE TELEVISION COMPANIES THAT COMPETE WITH CABLE	71%	81%	74%	82%	79%	70%
ONE SINGLE BIG SATELLITE TELEVISION COMPANY THAT COMPETES WITH CABLE	15%	10%	19%	9%	11%	21%
DON'T KNOW/REFUSED	14%	9%	7%	9%	10%	9%

9. And is it more likely for satellite television providers to offer broadband Internet service, high definition television, and upgrade its technology regularly if there is ... a single big satellite television company ... or ... two medium sized satellite television companies?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
TWO MEDIUM SIZE COMPANIES	57%	69%	61%	55%	72%	59%
SINGLE BIG COMPANY	20%	17%	26%	20%	17%	23%
DON'T KNOW/REFUSED	23%	14%	14%	25%	11%	18%

10. Your Congressman wants to know what the people of your community think about the merger of the two satellite TV providers – EchoStar and DirecTV into a single large satellite company. If you had to give advice, would you tell your Congressman to strongly support, somewhat support, somewhat oppose or strongly oppose the merger between the two satellite television companies?

	<u>NATIONAL</u>	<u>MO</u>	<u>MS</u>	<u>MT</u>	<u>NH</u>	<u>LA 3rd DISTRICT</u>
SUPPORT	21%	24%	28%	14%	18%	28%
OPPOSE	55%	64%	60%	72%	62%	57%
DON'T KNOW/REFUSED	24%	11%	13%	14%	20%	15%

EXHIBIT 3



July 25, 2001

Doug Johnson
Johnson Broadcasting Inc.
8440 Westpark
Houston, TX 77063

Dear Mr. Johnson:

We are in receipt of your letter requesting mandatory carriage for KNWS 51 in Houston TX DMA on DIRECTV.

We were not notified by the July 1, 2001 deadline of your request for mandatory carriage. In accordance with the Federal Communications Commission's Rules, DIRECTV thereby denies KNWS 51's request for carriage.

Any correspondence relating to this matter should be addressed to:

DIRECTV Local into Local
2230 E. Imperial Highway
Mail Stop N344
El Segundo, CA 90245

Sincerely,

DIRECTV



July 25, 2001

Doug Johnson
Johnson Broadcasting Inc.
8440 Westpark
Houston, TX 77063

Dear Mr. Johnson:

We are in receipt of your letter requesting mandatory carriage for KLDT 55 in Dallas-Ft Worth TX DMA on DIRECTV.

We were not notified by the July 1, 2001 deadline of your request for mandatory carriage. In accordance with the Federal Communications Commission's Rules, DIRECTV thereby denies KLDT55's request for carriage.

Any correspondence relating to this matter should be addressed to:

DIRECTV Local into Local
2230 E. Imperial Highway
Mail Stop N344
El Segundo, CA 90245

Sincerely,

DIRECTV

EXHIBIT 4

LAW OFFICES
SMITHWICK & BELENDIUK, P.C.

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

WWW.FCCWORLD.COM

GARY S. SMITHWICK
ARTHUR V. BELENDIUK

COUNSEL

WILLIAM M. BARNARD
JAMES K. EDMUNDSON
HENRY E. CRAWFORD

DIRECT DIAL NUMBER: (202) 363-4559
E-MAIL ADDRESS: abelendiuk@fccworld.com

August 3, 2001

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DIRECTV Local into Local
2230 E. Imperial Highway
Mail Stop N344
El Segundo, CA 90245

Re: Johnson Broadcasting, Inc.
Licensee of KNWS-TV, Channel 51, Houston, Texas

Dear Sir or Madam:

This firm represents Johnson Broadcasting, Inc. We are in receipt of your letter dated July 25, 2001, which denied Johnson Broadcasting's request for mandatory carriage. Your reason for denying carriage is based on the incorrect assumption that DIRECTV was not timely notified of Johnson Broadcasting's request for carriage in accordance with the Federal Communication Commission's rules and regulations.

Section 76.66 (d)(1)(ii) requires television stations to notify satellite carriers of their carriage election by certified mail return receipt requested. Section 1.47 (f) provides that service by mail is completed upon mailing. July 1, 2001 was the date for notifying a satellite carrier of a commercial television station's mandatory carriage election, as set forth in Section 76.66 (c)(3) of the Commission's rules. July 1, 2001 was a Sunday and therefore a "holiday" within the meaning of Section 1.4 (e)(1) of the rules. Section 1.4 (j) provides that when a filing date falls on a holiday the document may be filed the next business day. In this case, the next business day was Monday July 2, 2001.

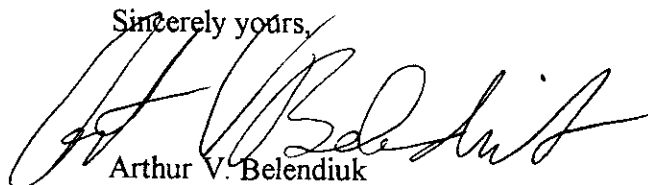
Attached is the Certified Mail Receipt for the letter sent on July 2, 2001, to DIRECTV. The letter was timely sent and therefore Johnson Broadcasting's station is entitled to mandatory carriage on your satellite system.

SMITHWICK & BELENDIUK, P.C.

August 3, 2001
Page 2 of 2

If you have any questions, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'A. V. Belendiuk', written over the typed name.

Arthur V. Belendiuk

AVB\ayp.080301a

cc: Johnson Broadcasting, Inc.

**U.S. Postal Service
CERTIFIED MAIL RECEIPT**

(Domestic Mail Only; No Insurance Coverage Provided)

7001 0320 0006 045A 0945

90245		
Postage	\$ 0.34	UNIT ID: 0066
Certified Fee	2.10	Postmark Here
Return Receipt Fee (Endorsement Required)	1.50	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 3.94	Clerk: KCEHFC
		07/02/01
Sent To <u>DirectV</u> Street, Apt. No., or PO Box No. <u>2230 E. Imperial Highway</u> City, State, ZIP+4 <u>El Segundo, CA 90245-3531</u>		
PS Form 3800, January 2001		

LAW OFFICES
SMITHWICK & BELENDIUK, P.C.

5028 WISCONSIN AVENUE, N.W.

SUITE 301

WASHINGTON, D.C. 20016

TELEPHONE (202) 363-4050

FACSIMILE (202) 363-4266

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GARY S. SMITHWICK
ARTHUR V. BELENDIUK

COUNSEL

WILLIAM M. BARNARD
JAMES K. EDMUNDSON
HENRY E. CRAWFORD

DIRECT DIAL NUMBER: (202) 363-4559
E-MAIL ADDRESS: abelendiuk@fccworld.com

August 3, 2001

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

DIRECTV Local into Local
2230 E. Imperial Highway
Mail Stop N344
El Segundo, CA 90245

Re: Johnson Broadcasting of Dallas, Inc.
Licensee of KLDT(TV), Channel 55, Lake Dallas, Texas

Dear Sir or Madam:

This firm represents Johnson Broadcasting of Dallas, Inc. We are in receipt of your letter dated July 25, 2001, which denied Johnson Broadcasting's request for mandatory carriage. Your reason for denying carriage is based on the incorrect assumption that DIRECTV was not timely notified of Johnson Broadcasting's request for carriage in accordance with the Federal Communication Commission's rules and regulations.

Section 76.66 (d)(1)(ii) requires television stations to notify satellite carriers of their carriage election by certified mail return receipt requested. Section 1.47 (f) provides that service by mail is completed upon mailing. July 1, 2001 was the date for notifying a satellite carrier of a commercial television station's mandatory carriage election, as set forth in Section 76.66 (c)(3) of the Commission's rules. July 1, 2001 was a Sunday and therefore a "holiday" within the meaning of Section 1.4 (e)(1) of the rules. Section 1.4 (j) provides that when a filing date falls on a holiday the document may be filed the next business day. In this case, the next business day was Monday July 2, 2001.

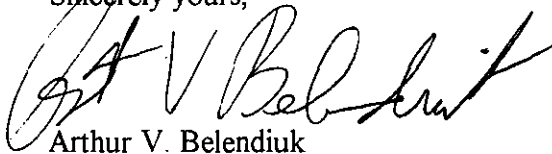
Attached is the Certified Mail Receipt for the letter sent on July 2, 2001, to DIRECTV. The letter was timely sent and therefore Johnson Broadcasting's station is entitled to mandatory carriage on your satellite system.

SMITHWICK & BELENDIUK, P.C.

August 3, 2001
Page 2 of 2

If you have any questions, please contact the undersigned.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Arthur V. Belendiuk', written in a cursive style.

Arthur V. Belendiuk

AVB\ayp.080301b

cc: Johnson Broadcasting of Dallas, Inc.

EXHIBIT 5



September 6, 2001

Arthur V. Belendiuk, Esq.
Smithwick and Belendiuk
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Dear Mr. Belendiuk:

We are in receipt of your letter dated August 3, 2001 concerning the late election of KNWS-TV, Channel 51 in Houston, Texas. Please note that the FCC rules state in Section 76.66 (c) (3) that "A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002". When the Commission established July 1, 2001 as the deadline for the first election cycle, it was aware that date was a Sunday.

Moreover, there is precedent for strict enforcement of the retransmission consent/mandatory carriage deadline. In a case involving a broadcast station whose retransmission consent election was mailed one day beyond the deadline, the Commission stated:

[A] retransmission consent election notification must be postmarked no later than midnight of each retransmission consent election period. While we can concede from the evidence that it was apparently WFXP's intention to request retransmission consent status rather than must-carry status in this instance, the fact of the matter is that its notification was mailed beyond the deadline mandated by the rules. Given the large number of broadcasters and cable operators involved, the Commission recognized the potential for confusion and dispute surrounding the initial must-carry/retransmission [footnote omitted] consent election. Thus the rules and process for making the election, including in particular the requirement that such notifications be sent by a date certain via certified mail, were specifically designed to provide certainty and avoid embroiling the Commission in disputes of this type. . . . As a result, we cannot conclude that WFXP made a timely retransmission consent election for the June 17, 1993 deadline.

In re: Gannon University Broadcasting, Broadcasting, Inc.
Request for Declaratory Ruling, 10 FCC Rcd 8619, at ¶7 (1995),

In light of this precedent, DIRECTV continues to deny KNWS's request for mandatory carriage.

Official correspondence related to this matter should be sent to:

DIRECTV Local Into Local
2230 East Imperial Highway
Mail Stop N344
El Segundo, CA 90245

Sincerely,

DIRECTV



September 6, 2001

Arthur V. Belendiuk, Esq.
Smithwick and Belendiuk
5028 Wisconsin Avenue, N.W.
Suite 301
Washington, D.C. 20016

Dear Mr. Belendiuk:

We are in receipt of your letter dated August 3, 2001 concerning the late election of KLDT-TV, Channel 55 in Lake Dallas, Texas. Please note that the FCC rules state in Section 76.66 (c) (3) that "A commercial television station must notify a satellite carrier, by July 1, 2001, of its retransmission consent-mandatory carriage election for the first election cycle commencing January 1, 2002". When the Commission established July 1, 2001 as the deadline for the first election cycle, it was aware that date was a Sunday.

Moreover, there is precedent for strict enforcement of the retransmission consent/mandatory carriage deadline. In a case involving a broadcast station whose retransmission consent election was mailed one day beyond the deadline, the Commission stated:

[A] retransmission consent election notification must be postmarked no later than midnight of each retransmission consent election period. While we can concede from the evidence that it was apparently WFXP's intention to request retransmission consent status rather than must-carry status in this instance, the fact of the matter is that its notification was mailed beyond the deadline mandated by the rules. Given the large number of broadcasters and cable operators involved, the Commission recognized the potential for confusion and dispute surrounding the initial must-carry/retransmission [footnote omitted] consent election. Thus the rules and process for making the election, including in particular the requirement that such notifications be sent by a date certain via certified mail, were specifically designed to provide certainty and avoid embroiling the Commission in disputes of this type. . . . As a result, we cannot conclude that WFXP made a timely retransmission consent election for the June 17, 1993 deadline.

In re: Gannon University Broadcasting, Broadcasting, Inc.
Request for Declaratory Ruling, 10 FCC Rcd 8619, at ¶7 (1995),

In light of this precedent, DIRECTV continues to deny KLDT's request for mandatory carriage.

Official correspondence related to this matter should be sent to:

DIRECTV Local Into Local
2230 East Imperial Highway
Mail Stop N344
El Segundo, CA 90245

Sincerely,

DIRECTV